

Election/Restriction

In accordance with the restriction requirement, Applicants provisionally elect, with traverse, Invention II, claims 8-18.

REMARKS

As required by the restriction requirement, Applicants have provisionally elected invention II, claims 8-18, with traverse.

Applicants traverse the restriction requirement as improper. Initially, Applicants note that both inventions are directed to a method for acceleration of a physiological recovery process and recite that administering of at least 50 mg of L-theanine. As set forth in the Restriction Requirement, both inventions I and II are classified in class 514, subclass 563, each requiring searching thereof. Thus, regardless of whether all claims are examined together or separately, a review of class 514, subclass 563 is required. In fact, two Office Actions on the merits have already occurred such that search and examination has been made.

As such, the search and examination can be made without a serious burden. Accordingly, an examination of all the claims of Inventions I and II on the merits is required, even if the application includes claims to distinct or independent inventions. *See MPEP § 803.*

Therefore, the restriction requirement with regard to Inventions I and II is improper. Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction requirement.

In light of the foregoing remarks, this application is now in condition for an examination on the merits, and early action is respectfully requested. If any questions remain regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed due. However, please charge any required fee (or credit any

Applicant: Geiss et al.
Application No.: 10/695,427
Examiner: P. Spivack

overpayments of fees) to the Deposit Account of the undersigned, Account No. 500601 (Docket No. 7390-X03-020).

Respectfully submitted,

A handwritten signature in black ink that reads "Paul D. Bianco". The signature is fluid and cursive, with "Paul" on top and "D. Bianco" below it.

Paul D. Bianco, Reg. # 43,500

Customer Number: 27317
Martin Fleit
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO
21355 East Dixie Highway, Suite 115
Miami, Florida 33180
Tel: 305-830-2600 Fax: 305-830-2605
e-mail: mfleit@focusonip.com